

**In the
Indiana Supreme Court**

CAUSE NUMBER: 94S00-0809-MS-

ORDER AMENDING TRIAL RULES

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Rules 5, 34, 60, 76 and 77 of the *Indiana Rules of Trial Procedure* are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

INDIANA TRIAL RULES

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Trial Rule 5

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(F) Filing With the Court Defined. The filing of pleadings, motions, and other papers with the court as required by these rules shall be made by one of the following methods:

- (1) Delivery to the clerk of the court;
- (2) Sending by electronic transmission under the procedure adopted pursuant to Administrative Rule 12;
- (3) Mailing to the clerk by registered, certified or express mail return receipt requested;
- (4) Depositing with any third-party commercial carrier for delivery to the clerk within three (3) calendar days, cost prepaid, properly addressed; ~~or~~
- (5) If the court so permits, filing with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk; or
- (6) Electronic filing, as approved by the Division of State Court Administration pursuant to Administrative Rule 16.

Filing by registered or certified mail and by third-party commercial carrier shall be complete upon mailing or deposit

Any party filing any paper by any method other than personal delivery to the clerk shall retain proof of filing.

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Rule 34. Production of documents, electronically stored information, and things and entry upon land for inspection and other purposes

(A) Scope. Any party may serve on any other party a request:

(1) to produce and permit the party making the request, or someone acting on the requester's behalf, to inspect and copy; any designated documents or electronically stored information (including, without limitation, writings, drawings, graphs, charts, photographs, sound recordings, images and other data or data compilations from which information can be obtained; or translated, if necessary, by the respondent into reasonably usable form; or to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 26(B) and which are in the possession, custody or control of the party upon whom the request is served; or

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Rule 60. Relief from judgment or order

(A) Clerical mistakes. Of its own initiative or on the motion of any party and after such notice, if any, as the court orders, ~~Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the trial court at any time before the trial court clerk issues its Notice of Completion of Clerk's Record is filed under Appellate Rule 8. Such corrections may be made by the trial court on its own initiative or on the motion of any party and after such notice, if any, as the court orders.~~ After the filing of the Notice of Completion of Clerk's Record and during an appeal, such mistakes may be so corrected with leave of the court on appeal.

(B) Mistake - Excusable neglect - Newly discovered evidence - Fraud, etc. On motion and upon such terms as are just the court may relieve a party or his legal representative from ~~an entry of default, final order, or final~~ a judgment, including a judgment by default, for the following reasons:

- (1) mistake, surprise, or excusable neglect;
- (2) any ground for a motion to correct error, including without limitation newly discovered evidence, which by due diligence could not have been discovered in time to move for a motion to correct errors under Rule 59;
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) entry of default or judgment by default was entered against such party who was served only by publication and who was without actual knowledge of the action and judgment, order or proceedings;
- (5) except in the case of a divorce decree, the record fails to show that such party was represented by a guardian or other representative, and if the motion asserts and such party proves that
 - (a) at the time of the action he was an infant or incompetent person, and
 - (b) he was not in fact represented by a guardian or other representative, and

- (c) the person against whom the judgment, order or proceeding is being avoided procured the judgment with notice of such infancy or incompetency, and, as against a successor of such person, that such successor acquired his rights therein with notice that the judgment was procured against an infant or incompetent, and
- (d) no appeal or other remedies allowed under this subdivision have been taken or made by or on behalf of the infant or incompetent person, and
- (e) the motion was made within ninety [90] days after the disability was removed or a guardian was appointed over his estate, and
- (f) the motion alleges a valid defense or claim;
- (6) the judgment is void;
- (7) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (8) any reason justifying relief from the operation of the judgment, other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4).

The motion shall be filed within a reasonable time for reasons (5), (6), (7), and (8), and not more than one year after the judgment, order or proceeding was entered or taken for reasons (1), (2), (3), and (4). A movant filing a motion for reasons (1), (2), (3), (4), and (8) must allege a meritorious claim or defense. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding or for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

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Rule 76. Change of venue

(A) In civil actions where the venue may be changed from the county, such change of venue from the county may be had only upon the filing of a verified motion specifically stating the grounds therefor by the party requesting the change. The motion shall be granted only upon a showing that the county where suit is pending is a party or that the party seeking the change will be unlikely to receive a fair trial on account of local prejudice or bias regarding a party or the claim or defense presented by a party. A party shall be entitled to only one change of venue from the county. Denial of a motion for change of venue from the county shall be reviewable only for an abuse of discretion. The Rules of Criminal Procedure shall govern proceedings to enforce a statute defining an infraction.

(B) In civil actions, where a change may be taken from the judge, such change shall be granted upon the filing of an unverified application or motion without specifically stating the ground therefor by a party or his attorney. Provided, however, a party shall be entitled to only one [1] change from the judge. After a final decree is entered in a dissolution of marriage case or paternity case, a party may take only one change of judge in connection with petitions to modify

that decree, regardless of the number of times new petitions are filed. The Rules of Criminal Procedure shall govern proceedings to enforce a statute defining an infraction.

(C) In any action except criminal no change of judge or change of venue from the county shall be granted except within the time herein provided. Any such application for change of judge (or change of venue) shall be filed not later than ten [10] days after the issues are first closed on the merits. Except:

(1) in those cases where no pleading or answer may be required to be filed by the defending party to close issues (or no responsive pleading is required under a statute), each party shall have thirty [30] days from the date the ~~same case~~ is placed and entered on the chronological case summary of the court as having been filed;

(2) in those cases of claims in probate and receivership proceedings and remonstrances and similar matters, the parties thereto shall have thirty [30] days from the date the ~~same case~~ is placed and entered on the chronological case summary of the court as having been filed;

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Rule 77. Court records

(A) Required records. The clerk of the circuit court shall maintain the records for all circuit, superior, county, probate and municipal courts in the county.

(1) The clerk of the circuit court shall maintain any record required by an act of the general assembly or a duly promulgated rule of any state agency, including the following:

- (a) Lis pendens record (IC 32-30-11-1);
- (b) Record of transcripts and foreign judgments (IC 33-32-3-2(d));
- (c) Judgment Docket (IC 33-32-3-2), wherein all orders requiring entry in the judgment docket shall include the term "judgment" in the title and shall set forth the specific dollar amount of the judgment in the body of the order;
- (d) Execution docket (IC 33-32-3-2);
- (e) Records specified under the probate code; and
- (f) Records specified by the state board of accounts as to the fiscal matters relating to the court and clerk.

(2) The clerk of the circuit court shall also maintain the following records as specified under this rule:

- (a) Chronological case summary;
- (b) Case file;
- (c) Record of judgments and orders (order book); and
- (d) Indexes.

(B) Chronological case summary. For each case, the clerk of the circuit court shall maintain a sequential record of the judicial events in such proceeding. The record shall include the title of the proceeding; the assigned case number; the names, addresses, telephone and attorney numbers of all attorneys involved in the proceeding, or the fact that a party appears pro se with address and telephone number of the party so appearing; and the assessment of fees and charges (public receivables). Notation of judicial events shall set forth the date of the event and briefly define any documents, orders, rulings, or judgments filed or entered in the case. The

chronological case summary shall also note the entry of orders, rulings and judgments in the record of judgments and orders, the entry of judgments in the judgment docket (IC 33-32-3-2), and file status (pending/decided) under section (G) of this rule. The chronological case summary shall be an official record of the trial court and shall be maintained apart from other records of the court and shall be organized by case number.

(C) Case file. In each case assigned a case number, the clerk of the circuit court shall maintain a file containing a copy of any order, entry, or judgment in the case and the original of all other documents relating to the case: including pleadings, motions, service of process, return of service, verdicts, executions, returns on executions and, if prepared, certified, and approved, the transcript of the testimony. The original order, entry, or judgment shall be maintained as part of the record of judgments and orders, the file shall contain a copy of such original. Unless necessary to detail the filing chronology, the case file need not include transmittal letters, instructions, envelopes or other extrinsic materials not related to the issues of the case. The file shall contain an index tab listing the case number and an abbreviated designation of the parties and shall note the information required under section (G) of this rule. In the event the court does not maintain a separate evidence file, documents entered into evidence, including depositions, shall be placed into the case file.

(D) Record of judgments and orders (order book). The clerk of the circuit court shall maintain a daily, verbatim, compilation of all judgments of the court, designated orders of the court, orders and opinions of an appellate tribunal relating to a case heard by the court, local court rules under Trial Rule 81, certification of the election of the regular judge of the court, any order appointing a special judge, judge pro tempore, or temporary judge, the oath and acceptance of any judge serving in the court, any order appointing a special prosecutor, and the oath and acceptance of a special prosecutor. ~~The record of judgments and orders may be kept in a paper format, on microfilm, or electronically.~~ The clerk may maintain a separate record of judgments and orders as required for the functional management of the court's business. Except where the record of judgments and orders is maintained electronically, a separate record of judgments and orders for confidential materials shall be maintained.

(E) Indexes. In addition to any index required under the provisions of this rule, state statute, or duly promulgated rule of a state agency, the clerk of the circuit court shall prepare and maintain indexes of all actions and proceedings in the circuit, superior, county, probate, and municipal courts in the County. This index shall be in an alphabetical format which notes the names of all parties, the date on which a party became part of the proceeding, and the case number of the proceeding. In the event courts are not located in the county courthouse, the clerk shall supervise the appropriate preparation of indexes for these courts and provide for the combination of indexes for all courts in the county.

(F) Pleadings and papers: Where filed and entered. All pleadings and papers shall be filed in accordance with Trial Rule 5 with the clerk of the circuit court. In the event a court is not located in the same facility as the clerk of the circuit court, all pleadings and papers shall be filed with the clerk serving that court. If an initial pleading or complaint is assigned to a court not within the facility where the initial pleading or complaint was filed, the clerk shall promptly notify the person filing the pleading and transmit the documents to the clerk serving the court

where the matter will be considered and all further papers will be filed with the latter court. In the event an initial pleading or complaint is filed with the clerk of the wrong court, the clerk, upon notice to the person filing the initial pleading or complaint, may transfer the case to the proper court before service of summons or appearance of other parties, or any opposing party may move for transfer as provided for under Trial Rule 12(B) or Trial Rule 75.

(G) Case File Status.

- (1) The clerk of the circuit court shall maintain the case files, as set forth under section (C) of this rule, in either a pending or decided status. Pending files, arranged by assigned case number, consist of all cases which have not been decided. Decided files consist of the actions which have been concluded and no further proceedings remain to be conducted as evidenced by the final judgment or other order of the court.
- (2) When a case has been decided, the file shall be assigned a disposition date pursuant to Administrative Rule 7 of the Indiana Supreme Court and maintained under the original case number in a location apart from pending files. In the event a decided case is redocketed for consideration by the court, the disposition date shall be deleted from the file and the case file returned to the pending cases in sequence with the case number originally assigned. A disposition date shall be reassigned at the time the case returns to a decided status.

(H) Statistics. The clerk of the circuit court shall establish procedures to determine a statistical count of all actions filed, decided, and reinstated as required by the division of state court administration.

(I) Replacing lost papers. If an original pleading or paper filed with the clerk of the circuit court cannot be located within the record keeping system set forth under this rule, the court may authorize a copy of such record to be filed and used as the original.

(J) Method of record keeping. Under the direction of the Supreme Court of Indiana, the clerk of the circuit court may, notwithstanding the foregoing sections, keep records in any suitable media. Records that must be maintained permanently pursuant to Administrative Rule 7 D. (Retention Schedules) (Trial Rule 77 Schedules (10)), must, if maintained electronically, be kept so that a hard copy can be generated at any time. The record keeping formats and systems and the quality and permanency requirements employed for the chronological case summary, the case file, and the record of judgments and orders (order book) shall be approved by the division of state court administration for compliance with the provisions of this rule.

(K) Electronic Posting of Court Records. The clerk, with the consent of the majority of the judges in the courts of record, may make court records, including but not limited to the chronological case summary, record of judgments and orders, index, and case file available to the public through remote electronic access such as the Internet or other electronic method. The records to be posted, the specific information that is to be included, its format, pricing structure, if any, method of dissemination, and any subsequent changes thereto must be approved by the Division of State Court Administration under the direction of the Supreme Court of Indiana. Such availability of court records shall be subject to the applicable laws regarding confidentiality.

These amendments shall take effect January 1, 2009.

The Clerk of this Court is directed to forward a copy of this Order to the Clerk of each Circuit Court in the State of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this _____ day of September, 2008.

Randall T. Shepard
Chief Justice of Indiana

All Justices concur.